

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RECEIVED

MAY 19 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

ERRATA

On May 15, 1997, American Public Communications Council ("APCC"), by its attorneys, submitted its Consolidated Application of the American Public Communications Council for Review of the CEI Orders. APCC would like to correct the following inadvertent errors and omissions (corrected copies of the filing, without the attachment, are attached).

These errata amend APCC's Application as follows:

Amend Summary, page iii, paragraph 1, 4th line, by changing
"... deadline. Specifically ..." to "... deadline, specifically...";

Amend Summary, page iii, paragraph 2, 5th line, by changing
"... April 109 ..." to "... April 10 ...";

No. of Copies rec'd
List ABCDE

Of

Amend page 8, footnote 15, line 11-12, by changing "... NYNEX and U S West April 10 submissions ..." to "... NYNEX April 10 submission ...";

Amend page 8, footnote 15, line 21, by changing "... U S West ..." to "... NYNEX ...";

Amend page 9, line 11, by changing "... inc. ..." to "... Inc. ...";

Amend page 12, line 10, by changing "... is required ..." to "... intends ...";

Amend pages 18-19 by moving the 1st sentence on page 19 to the beginning of the last paragraph on page 18 and by deleting the second sentence on page 19;

Amend page 19, last line, by changing "is instrument-based" to "in instrument-based".

May 19, 1997

Respectfully Submitted



Albert H. Kramer
Robert F. Aldrich
David M. Janas
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, DC 20037

Attorneys for the American Public
Communications Council

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)
_____)

CC Docket No. 96-128

**CONSOLIDATED APPLICATION OF
THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL
FOR REVIEW OF THE CEI ORDERS**

Albert H. Kramer
Robert F. Aldrich
David M. Janas
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 785-9700

Attorneys for the American Public
Communications Council

May 19, 1997

QUESTIONS PRESENTED

Pursuant to Rule 1.115(b)(2) of the Commission's Rules, 47 C.F.R. § 1.115(b)(2), the American Public Communications Council ("APCC") presents the following questions for the Commission's review, which either involve action taken pursuant to delegated authority that is in conflict with statute, regulation, case precedent, or established Commission policy, or an erroneous finding as to an important or material question of fact:

1. Whether the Common Carrier Bureau ("Bureau") erred in approving the BellSouth, NYNEX and U S West CEI Plans when those BOCs had demonstrated they would not federally tariff call screening services that they are required to federally tariff under the Commission's Payphone Orders.¹

2. Whether the Bureau erred by failing to require Bell companies to provide payphone service providers ("PSPs") subscribing to "COCOT" service the ability to "transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line,"² when the coin line service designed for the BOCs' own payphones provides such a unique screening code.

¹ Infra, at 3 n.3.

² Reconsideration Order, infra, at 3 n.3, ¶ 64.

3. Whether the Bureau erred by failing to require Bell companies to provide specific details in their CEI Plans on how their service ordering procedures will prevent discrimination and unfair marketing practices when location providers change from BOC payphones to unaffiliated payphones and vice versa.

SUMMARY

The CEI Orders commit three critical errors. First, the Bureau erred in approving the CEI Plans of NYNEX, U S West and BellSouth, even though each of those companies indicated that they would not be in compliance, as of the extended May 19 deadline, specifically with the federal tariffing requirements of the Commission's Payphone Orders. Each of the Bell companies made clear that it would not federally tariff call blocking and call screening services.

On April 14, U S West deleted its unbundled blocking and screening service, "CUSTOMNET," from its federal payphone compliance tariff filing, even though the Bureau specified in its Clarification Order that unbundled blocking and screening services must be federally tariffed, and even though blocking and screening services are essential to PSPs (and clearly not "incidental to payphone service"). Similarly, in its April 10 waiver compliance submission, NYNEX failed to identify as subject to federal tariffing its subsidiary New York Telephone Company's blocking and screening services, even though its other LEC subsidiary, New England Telephone and Telegraph Company, will federally tariff blocking and screening services. BellSouth's April 9 waiver compliance submission also failed to identify its unbundled blocking and screening services as subject to federal tariffing.

Second, the Bureau erred by failing to require Bell companies to provide PSPs on a nondiscriminatory basis, a service necessary to help ensure timely compensation payments or by failing to even address this issue. The Payphone Orders require that, to be

eligible for compensation, "[e]ach payphone [to] transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line."³ The BOCs provide a discrete "27" screening code with the "coin line" services that are designed for and used overwhelmingly by their own payphone operations. However, they provide a non-discrete "07" screening code with the "COCOT" services used primarily by independent PSPs. Given the critical importance of screening codes for both fraud prevention and payphone compensation, the BOCs' practice constitutes a rather obvious case of discrimination in favor of their own payphone services, in violation of Section 276(a)(2). The Bureau erred by failing to address the screening code issue when reviewing the BOC CEI Plans in this docket, and by failing to rule that BOCs must provide PSPs using COCOT lines with a screening code that uniquely identifies their lines as payphone lines. Accordingly, the Commission should require BOCs (and other LECs) to provide PSPs using COCOT lines with a screening code that uniquely identifies their lines as payphone lines.

Finally, the Bureau erred by failing to require Bell companies to provide specific details in their CEI Plans on how their service ordering procedures will prevent discrimination and unfair marketing practices when location providers change from BOC payphones to unaffiliated payphones and vice versa, or by failing to even address this issue.

³

Reconsideration Order, *infra*, at 3 n.3, ¶ 64.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

**CONSOLIDATED APPLICATION OF
THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL
FOR REVIEW OF THE CEI ORDERS**

Pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the American Public Communications Council ("APCC")⁴ hereby applies for review of the Common Carrier Bureau's April 15, 1997 orders approving the Comparably Efficient Interconnection ("CEI") Plans of Ameritech, Bell Atlantic Telephone Companies ("Bell Atlantic"), BellSouth Corporation ("BellSouth"), NYNEX Telephone Companies ("NYNEX"), Pacific Bell and Nevada Bell (jointly, "PacTel"), Southwestern Bell

⁴ APCC is a national trade association of some 1,200 independent (non-telephone company) providers of pay telephone equipment and services. APCC's purpose is to promote fair competition and high standards of service in the payphone and public communications markets.

Telephone Company ("SWBT") and U S West, Inc. ("U S West").⁵ The Bureau's CEI Orders approved the CEI Plans of Ameritech, Bell Atlantic, BellSouth, NYNEX, PacTel, SWBT and U S West (collectively, "BOC CEI Plans").

⁵ See Ameritech's Plan to Provide Comparably Efficient Interconnection to Providers of Pay Telephone Services, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-790, Released April 15, 1997 (CCB) ("Ameritech CEI Order"); Bell Atlantic Telephone Companies' Comparably Efficient Interconnection Plan for the Provision of Basic Payphone Services, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-791, Released April 15, 1997 (CCB) ("Bell Atlantic CEI Order"); BellSouth Corporation's Offer of Comparably Efficient Interconnection to Payphone Service Providers, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-792, Released April 15, 1997 (CCB) ("BellSouth CEI Order"); The NYNEX Telephone Companies' Offer of Comparably Efficient Interconnection to Payphone Service Providers, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-793, Released April 15, 1997 (CCB) ("NYNEX CEI Order"); Pacific Bell and Nevada Bell Comparably Efficient Interconnection Plan for the Provision of Basic Telephone Service, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-794, Released April 15, 1997 (CCB) ("PacTel CEI Order"); Southwestern Bell Telephone Company's Comparably Efficient Interconnection Plan for the Provision of Basic Payphone Services, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-795, Released April 15, 1997 (CCB) ("SWBT CEI Order"); U S West's Comparably Efficient Interconnection Plan for Payphone Services, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-796, Released April 15, 1997 (CCB) ("U S West CEI Order"). The Ameritech CEI Order, Bell Atlantic CEI Order, BellSouth CEI Order, NYNEX CEI Order, PacTel CEI Order, SWBT CEI Order and U S West CEI Order are referred to collectively herein as "CEI Orders."

INTRODUCTION

In the Payphone Orders,⁶ the Commission adopted a creative and carefully considered approach to carrying out the Congressional mandate "to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call" 47 U.S.C. § 276(b)(1)(A). By contrast, in prescribing safeguards to prevent the Bell Operating Companies ("BOCs") from subsidizing or discriminating in favor of their own payphone service, 47 U.S.C. §§ 276(a), (b)(1)(C), the Commission generally declined to prescribe any regulations that go beyond the "minimum" Computer III safeguards required by Section 276(b)(1)(C). But nothing in the Payphone Orders relieved the Bureau of the statutory requirement to ensure that the Bell companies do not discriminate. It was incumbent on the Bureau to be diligent in ensuring full compliance with the Computer III requirements imposed by the Commission.

In the CEI Orders, the Bureau failed to appropriately interpret and apply the Computer III CEI parameters so as to ensure that they are effective nondiscrimination safeguards for the particular circumstances of the payphone industry. Instead, the Bureau adopted a sterile, formalistic approach to CEI. This formalistic approach pervades virtually every issue addressed in the CEI Orders, and has substantially weakened the effectiveness of

⁶ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996), Report and Order, FCC 96-388, released September 20, 1996 ("Payphone Order"), Order on Reconsideration, FCC 96-439, released November 8, 1996 ("Reconsideration Order"), Order, DA 97-678, released April 4, 1997 (CCB) (clarifying the Payphone Order and Reconsideration Order) ("Clarification Order"), Order, DA 97-805, released April 15, 1997 (CCB) ("Waiver Order"). The Payphone Order, Reconsideration Order, Clarification Order and Waiver Order are referred to collectively herein as the Payphone Orders.

the CEI safeguards as applied to the payphone industry. For example, the Bureau declined to prohibit the clear discrimination in LEC provision of call rating and operator service routing in connection with coin line services, simply because the Payphone Order had not expressly identified these problems as discrimination problems. E.g., BellSouth CEI Order, ¶¶ 80-82.

Although APCC believes that the CEI Orders are pervasively deficient, APCC limits its consolidated application for review to three of the critical issues that need to be addressed to minimally correct the "competitive imbalances that exist in the payphone industry." H.R. Rep. No. 1555, 104th Cong., 1st Sess., pt. 1, at 88 (1995). APCC has narrowed the scope of its application in order to focus the Commission's resources on these three CEI issues.

I. BELLSOUTH, NYNEX AND U S WEST ARE NOT IN COMPLIANCE WITH FEDERAL TARIFFING REQUIREMENTS

As addressed below, the Bureau erroneously approved the CEI Plans of U S West, NYNEX and BellSouth, even though these BOCs' own filings showed that they were not in compliance with the federal tariffing requirements of the Commission's Payphone Orders.

A. Background

In the Payphone Orders, the Commission required that, in addition to tariffing a "basic payphone line" in state jurisdictions, LECs must tariff, in both the federal and state

CORRECTED COPY

jurisdictions, any unbundled features or functions provided to payphone service providers ("PSPs"). Reconsideration Order, ¶¶ 162, 163. As the Commission noted, federal tariffing of unbundled features "enables the Commission to directly ensure that payphone services comply with Section 276." *Id.*, ¶ 162. Specifically, federal tariffing helps ensure that important services needed by PSPs are available at cost-based,⁷ nondiscriminatory rates, thereby promoting both payphone competition and "the widespread deployment of payphone services to the benefit of the general public." Clarification Order, ¶ 3 (quoting 47 U.S.C. § 276(b)).

In the Clarification Order, ¶ 18 & n.49, the Bureau clarified that "payphone-specific" features⁸ such as call screening and call blocking, must be federally tariffed when offered on an unbundled basis. Call screening and call blocking services have long been recognized as critically important in preventing fraud.⁹ More recently, call screening service has become even more important to PSPs. In the Payphone Orders, the

⁷ Under the Computer III pricing guidelines, "cost-based" is defined as complying with the "new services" test codified at 47 C.F.R. § 61.49(g)(2). Reconsideration Order, ¶ 163 & n.492. Under the "new services" test, cost-based rates are defined by the FCC to equal direct costs plus an appropriate level of overhead costs. Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524, ¶¶ 38-44 (1991).

⁸ "Features and/or functions" will be referred to herein as "features."

⁹ See, e.g., Policy and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, 7 FCC Rcd 4355, 4359-62 (requiring LECs to offer international blocking services and screening services, such as originating line screening ("OLS") and billed number screening ("BNS") services).

Commission *required* PSPs, in order to be eligible for compensation, to subscribe to services that transmit "discrete" identifying digits to IXC's to enable IXC's to track compensable calls from payphones. Reconsideration Order, ¶ 64.¹⁰

B. The BOC's' April 9, 10 and 14 Filings

In the Clarification Order, in order to avoid causing hardship to those LECs who apparently had not understood the Commission's earlier rulings, the Bureau waived the January 15, 1997 filing deadline for federal tariffs. LECs were required to file all federal tariffs within 45 days of the April 4, 1997 Clarification Order, with a scheduled effective date 15 days after filing. Clarification Order, ¶ 21. As a condition of receiving a limited waiver of the deadline for filing federal tariffs, the Bureau required the Bell companies to identify by April 10, 1997, all features that they intended to federally tariff.¹¹

BellSouth's April 9, 1997 submission and NYNEX's April 10, 1997 submission pursuant to the Clarification Order demonstrated that BellSouth and NYNEX are not in compliance with the Payphone Orders. BellSouth and NYNEX failed to commit to federally tariffing unbundled features that they tariff in the states. BellSouth's April 9 filing failed to identify its unbundled call blocking and call screening features. NYNEX failed to identify the unbundled call blocking and call screening features offered by New York Telephone Co.

¹⁰ IXC's must also subscribe to a separate service that enables them to identify the transmitted digits.

¹¹ The Bureau's apparent purpose for this condition was to ensure that it had the information before acting on the BOC CEI Plans.

U S West, which had included its "CUSTOMNET" blocking and screening service in its January 15, 1997 federal payphone compliance tariff filing, advised the Commission in its April 10 filing that "[U S West] federally tariffed the network-based payphone specific unbundled features and functions in its intrastate tariffs on January 15, 1997 . . . and is in full compliance with the Commission's federal tariffing requirements . . .

.¹² However, on April 14, 1997, U S West *deleted* its blocking and screening CUSTOMNET service from its January 15 tariff filing.¹³

Thus, BellSouth, NYNEX and U S West have all demonstrated that they do not intend to federally tariff, as of the extended May 19 deadline, unbundled call screening and blocking features that are of critical importance to PSPs and that were specifically identified in the Clarification Order, ¶ 18 & n.49, as subject to the federal tariffing requirement.

C. The Bureau's Errors

In the CEI Orders, the Bureau apparently made a determination that BellSouth, NYNEX and U S West had identified all functions that they were required to federally

¹² Ex Parte Letter from BB Nugent, U S West Exec. Dir. Federal Regulatory, to William F. Caton, Acting Secretary, dated April 10, 1997 in CC Docket No. 96-128.

¹³ U S West's Comparably Efficient Interconnection Plan for Payphone Services, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Amendment of Plan of U S West, Inc. to Offer Comparably Efficient Interconnection for Payphone Services, filed April 25, 1997 ("U S West CEI Amendment") at 2. The U S West CEI Amendment is included as Exhibit 2 to the Petition of the American Public Communications Council for Clarification or in the Alternative Reconsideration, filed in CC Docket No. 96-128 on May 5, 1997 ("APCC Petition for Clarification or Reconsideration") (attached hereto).

CORRECTED COPY

tariff.¹⁴ The Bureau failed to recognize that the BOCs' submissions demonstrated non-compliance with the federal tariffing requirement. Responses to these BOC submissions by state payphone associations demonstrated that BellSouth and NYNEX are not in compliance with their federal tariffing obligations under the Payphone Orders.¹⁵ Further, the Bureau did not cite U S West's April 14 filing withdrawing its blocking and screening tariff for "CUSTOMNET."

It was error for the Bureau to approve the BellSouth, NYNEX and U S West CEI Plans given the deficiencies in the BOCs' compliance filings. Further, in determining that the BOCs complied with their federal tariffing requirements, the Bureau's CEI Orders

¹⁴ See BellSouth CEI Order, ¶ 38 & n.140; NYNEX CEI Order, ¶ 42 & n.117-18; U S West CEI Order, ¶ 50 & n.124.

¹⁵ Ex Parte Letter from John F. Beach, Attorney for Southeastern Public Communications Coalition to William F. Caton, Acting Secretary, dated April 14, 1997, in CC Docket No. 96-128 ("SPCC Ex Parte"); Ex Parte Letter from Marcus W. Trathen, Counsel to North Carolina Payphone Association to William F. Caton, dated April 14, 1997, in CC Docket No. 96-128 ("NCPA Ex Parte"); Ex Parte Letter from Keith J. Roland, Attorney for Independent Payphone Association of New York, Inc. to William F. Caton, dated April 14, 1997, in CC Docket No. 96-128 ("IPANY Ex Parte"). The SPCC and NCPA Ex Partes (which is attached as Exhibit 4 to the APCC Petition for Clarification or Reconsideration) and the IPANY Ex Parte (which is attached as Exhibit 6 to the APCC Petition for Clarification or Reconsideration) were submitted as soon as possible in response to the BellSouth April 9 submission and the NYNEX April 10 submission. The BOC responses to the Clarification Order were filed on Thursday, April 10, 1997, and were not publicly available from the Commission until late on Friday, April 11, 1997. The state payphone associations' responses were filed by noon on the following Monday, April 14, 1997. Thus, to the extent that the Bureau relied on the BellSouth and NYNEX submissions, without considering the state payphone associations' responses that identified deficiencies in the BellSouth and NYNEX federal payphone compliance tariff filings, the Bureau committed a procedural error.

are erroneous. The specific reasons why U S West, BellSouth and NYNEX are out of compliance with the federal tariffing requirement are addressed below.

1. U S West's Federal Tariff Filing in Response to the Payphone Order and Reconsideration Order

On January 15, 1997, U S West filed a federal "payphone compliance" tariff, wherein U S West tarified, among other services, its CUSTOMNET blocking and screening service. APCC requested investigation of the tariff filing because U S West was proposing to charge \$5.00 per line per month for a service that according to its own cost support, costs only \$0.01 per line per month.¹⁶ See Petition of the American Public Communications Commission to Suspend and Investigate, filed February 10, 1997 in U S West Communications, Inc. Revision of Tariff F.C.C. No. 5, Transmittal No. 823, at 5-7.

On April 10, 1997, when its January 15, 1997 federal tariff was still pending, U S West filed a submission pursuant to the Clarification Order, representing that "[U S West] federally tarified the network-based payphone specific unbundled features and functions in its intrastate tariffs on January 15, 1997 . . . and is in full compliance with the Commission's federal tariffing requirements" On April 15, citing U S West's April 10 submission,¹⁷ the Bureau approved U S West's CEI Plan. On April 14, however, U S West

¹⁶ U S West's rate for CUSTOMNET must be cost-based, which is defined as complying with the "new services" test, *supra*. Reconsideration Order, ¶ 163 & n.492. U S West tariff pages are attached as Exhibit 1 to APCC's Petition for Clarification or Reconsideration.

¹⁷ U S West CEI Order, ¶ 50 & n.124.

CORRECTED COPY

deleted its CUSTOMNET service from its federal payphone compliance tariff filing.¹⁸ Thus, the conclusion that "U S West has filed a federal tariff for the unbundled features and functions offered in conjunction with the Basic PAL [i.e., COCOT] service," U S West CEI Order, ¶ 50, is erroneous.

After its CEI Plan had already been approved, on April 25, 1996, U S West sought to also delete CUSTOMNET from its CEI Plan, claiming that CUSTOMNET need not be federally tariffed after all. According to U S West, CUSTOMNET is not payphone-specific because it "is also used by numerous end-user customers other than payphone service providers," and 70% of its CUSTOMNET lines are business or residential lines.¹⁹ Therefore, under the Clarification Order, U S West asserts it does not have to federally tariff CUSTOMNET.

APCC will soon supplement the record in this proceeding and file its "Opposition of the American Public Communications Council to U S West's Amendment to its CEI Plan," which will address in detail the reasons U S West's interpretation is utterly inconsistent with the language and purpose of the Clarification Order.²⁰ In short, there are several reasons why U S West's constricted interpretation of the Clarification Order is

¹⁸ U S West CEI Amendment at 2. There is no indication that the Commission's CEI review Staff considered this April 14 filing or was even made aware of it prior to issuing the order approving U S West's CEI Plan. However, whether or not the Bureau had an opportunity to consider the filing, its approval of the plan was erroneous in fact and must be reversed.

¹⁹ U S West CEI Amendment at 2.

²⁰ See also APCC Petition for Clarification or Reconsideration (attached).

wrong. First, the Bureau *expressly identified* call screening, Clarification Order, ¶ 18, and call blocking, *id.* at ¶ 18 n.49, as "payphone-specific, network-based, unbundled features and functions." Second, although U S West claims that CUSTOMNET cannot be "payphone-specific" because it is "generally available to all U S West end-user customers," U S West's CEI Amendment at 2, in order to qualify as a feature that is not payphone-specific, the feature must be *both* "generally available to all local exchange customers *and* only incidental to payphone service." Clarification Order, ¶ 18 (emphasis added). CUSTOMNET is *essential* to -- and, as U S West admits, widely used by -- PSPs. CUSTOMNET is clearly not "incidental to payphone service," and therefore, U S West is required to federally tariff CUSTOMNET under the Payphone Orders. Third, the Clarification Order cites as "payphone-specific" a number of other features, such as answer supervision²¹ and IDDD blocking,²² which are commonly available to entities other than PSPs. The Bureau would not have cited answer supervision and IDDD blocking as payphone-specific services if it had intended to require federal tariffing of only services offered exclusively or predominantly to PSPs.

²¹ Answer supervision is specifically cited as a payphone-specific feature, Clarification Order, ¶ 18, even though it is available to enhanced service providers ("ESPs") and other non-payphone subscribers.

²² The Bureau also specifically cited IDDD blocking as a payphone-specific service, *id.*, ¶ 18 n.49, although the Commission recently required LECs to offer IDDD blocking to business customers, in addition to PSPs. Policy and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, 11 FCC Rcd 17021, 17027 (1996) (requiring "LECs to offer their federally tariffed international call blocking service on an unbundled basis to all business customers, aggregators and non-aggregators alike") (footnote omitted).

In short, the Clarification Order indicates that the Bureau did not intend to limit federal tariffing of payphone-specific features to only those features predominantly subscribed to by PSPs. Thus, U S West improperly deleted CUSTOMNET service from its federal tariff. The Bureau found in the U S West CEI Order that U S West filed a federal tariff for U S West's unbundled features and functions. The Bureau committed an error. The Commission should require U S West to federally tariff its CUSTOMNET blocking and screening service.

2. NYNEX Federal Tariff Filing

NYNEX's April 10, 1997 submission,²³ which identifies, pursuant to the Clarification Order, the functions that it intends to federally tariff, demonstrates that NYNEX will fail to comply with the Commission's CEI availability requirements. NYNEX's subsidiary, New England Telephone and Telegraph Company, does intend to federally tariff its blocking and screening services as payphone-specific, unbundled features. However, just because its New York tariffs are presented differently, the NYNEX subsidiary, New York Telephone Company, *does not* intend to federally tariff its call blocking and screening services, which are also payphone-specific, unbundled features.²⁴

"Unbundled" features include all features that are available but not automatically provided with the basic payphone line. If a "smart" or "dumb" payphone line can be

²³ NYNEX's April 10 submission is attached as Exhibit 5 to APCC's Petition for Clarification or Reconsideration.

²⁴ See *id.*

purchased for different prices depending on whether it is ordered with or without a feature, then the feature is "unbundled." LECs should not be permitted to escape the federal tariffing requirements simply by phrasing their tariffs a certain way. NYNEX's New York tariff has several service options that include the payphone line plus various features, and each service option is offered at a different price. Apparently believing that it can characterize the components of these service packages as "bundled," NYNEX has declined to federally tariff any of the blocking and screening features offered in New York.

However, the blocking and screening features are actually being offered on an unbundled basis. The price NYNEX charges for a particular feature can be determined by subtracting the price of a service option *without* the feature from the price of a service option *with* the feature. For example, the rate for NYNEX's two-way, Basic Public Access Line ("BPAL"), which *does not* include outward call screening ("OCS"), is \$15.47. The rate for NYNEX's two-way, BPAL that *does* include OCS, and is apparently otherwise the same, is \$17.72. Thus, NYNEX charges \$2.25 more for OCS. NYNEX is required to federally tariff OCS as an unbundled function,²⁵ and to demonstrate that the \$2.25 rate complies with the "new services" test.²⁶ If NYNEX's blocking and screening features are

²⁵ The IPANY Ex Parte, *see* Exhibit 6 to APCC's Petition for Reconsideration or Clarification, addresses other examples of unbundled features or functions that NYNEX does not intend to federally tariff. The IPANY Ex Parte also attaches relevant NYNEX tariff pages.

²⁶ Because OCS involves a simple transmission of two extra digits in the ANI stream, which gives an operator service provider notice that a call originates at a pay telephone, the cost of adding the extra digits should be minuscule (and presumably in the same "ballpark" as U S West's cost of *one cent* per line per month). NYNEX's \$2.25 rate is thus apparently well in excess of cost.

"unbundled," then any unbundled feature could be transformed into a "bundled" one by simply revising the way that the rates for the feature are presented in the tariff.

In short, the Bureau held that NYNEX complied with the federal tariffing requirements,²⁷ and thus the Bureau erred. The Commission should not permit NYNEX to evade the federal tariffing requirement by setting up several different categories of service options that include or exclude particular features, and then claiming that the features are not unbundled because they are included in the price of a particular service option, when the same service minus the feature is also available. NYNEX's CEI Plan should be rejected and NYNEX should be required to federally tariff New York Telephone Company's call blocking and call screening services.

3. BellSouth's Federal Tariff Filing

BellSouth's April 9, 1997 submission pursuant to the Clarification Order shows on its face that BellSouth fails to comply with the Commission's CEI availability requirements. Although BellSouth tariffs at the state level unbundled call blocking and call screening services, which the Bureau cited as specific examples of "payphone-specific" features, Clarification Order, ¶ 18 & n.49, BellSouth's April 9, 1997 submission pursuant to the Clarification Order ("BellSouth's April 9 Ex Parte")²⁸ demonstrates that BellSouth does not intend to federally tariff its blocking and screening services. BellSouth's April 9

²⁷ The Bureau held that "NYNEX's plan complies with the CEI availability requirement." NYNEX CEI Order, ¶ 45.

²⁸ BellSouth's April 19 Ex Parte is attached as Exhibit 3 to APCC's Petition for Clarification or Reconsideration.

Ex Parte states, "there are no payphone-specific, network-based, unbundled features and functions provided to others or taken by BellSouth's payphone operations that are tariffed by BellSouth at the intrastate level."²⁹

BellSouth's rationale for failing to federally tariff its call blocking and screening features is unclear. Although BellSouth claims that answer supervision is not "payphone-specific," BellSouth nevertheless does commit to filing a federal tariff for answer supervision because the Bureau references answer supervision as a "payphone-specific," unbundled feature. BellSouth's April 9 Ex Parte at 2. BellSouth, however, has ignored the fact that the Bureau also specifically cited call screening and call blocking as payphone-specific features. One possible explanation for this inconsistent position is that BellSouth's rates for blocking and screening are clearly not cost based. BellSouth's cost for central office blocking and screening in South Carolina, for example, is only \$0.01 per line per month. Yet, BellSouth charges from \$2.00 to \$4.00 in state tariffs for its blocking and screening services.³⁰

BellSouth's failure to federally tariff its call blocking and call screening services clearly violates "the requirement to file federal tariffs [for] payphone-specific, network-based, unbundled features and functions." Clarification Order, ¶ 18. The Bureau

²⁹ As addressed above, the SPCC and NCPA Ex Partes responded to BellSouth's claim. See Exhibit 3 to APCC's Petition for Clarification or Reconsideration.

³⁰ BellSouth South Carolina tariff pages are included as an exhibit to the SPCC Ex Parte. See Exhibit 4 to APCC's Petition for Clarification or Reconsideration.

held that BellSouth fulfilled its federal tariffing requirements,³¹ and the Bureau erred. The Commission should reject the CEI Plan of BellSouth and require it to federally tariff call blocking and call screening services.

II. SCREENING CODES

The BOCs provide a discrete "27" screening code with the "coin line" services that are designed for and used by their own payphone operations. However, they provide a non-discrete "07" screening code with the "COCOT" services used primarily by independent PSPs. Given the critical importance of screening calls to both fraud prevention and payphone compensation, the BOCs' practice constitutes a rather obvious case of discrimination in favor of their own payphone services, in violation of Section 276(a)(2).

Nevertheless, the Bureau held in the CEI Orders that whether the BOCs provide screening codes "in compliance with the requirements established in the payphone rulemaking proceeding [is] outside the scope of the CEI review process and is more appropriately addressed in [the payphone rulemaking] proceeding or in other proceedings." E.g., U S West CEI Order, ¶ 76 & n.182. The Bureau cited Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Petition Pertaining to Originating Line Screening Services, Memorandum Opinion and Order, CCB/CPD File Nos. 96-18 et al., released December 20, 1996 ("OLS Waiver Order"), as

³¹ The Bureau held that "BellSouth's plan complies with the CEI availability requirement." BellSouth CEI Order, ¶ 38.

an appropriate proceeding to address this issue. However, the OLS Waiver Order states that issues regarding the use of the OLS screening code service in connection with per-call compensation requirements *should be* addressed in this docket, CC Docket No. 96-128.³² Thus, the Bureau erred by failing to address the screening code issue when reviewing the BOC CEI Plans in this docket, and by failing to rule that BOCs must provide PSPs using COCOT lines with a screening code that uniquely identifies their lines as payphone lines.

As the Bureau noted in its CEI Orders,³³

the Commission stated that, once per-call compensation becomes effective, "[e]ach payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line." Reconsideration Order at para. 64. That order further required that "all LECs must make available to PSPs, on a tariffed basis, such coding digits as part of the ANI for each payphone." *Id.*

The "07" code provided to independent PSPs using COCOT service is clearly inferior to the unique "27" code provided to BOC payphones using coin line service, and such inferior treatment is inconsistent with the nondiscrimination requirements of Section 276(a). Having a unique screening code automatically transmitted to the IXC provides Bell company payphones with a tremendous advantage in the call counting process and thus the collection of per-call payphone compensation. With a unique screening code, the IXC knows immediately that a call is compensable, and should not have to take any further

³² OLS Waiver Order, ¶ 12 n.28 (stating that waivers "permit the provision of enhanced OLS service within the time frames contemplated by the Commission for possible use in connection with per-call compensation requirements for [PSPs] established in the Payphone Order" and that "[r]equirements concerning per-call compensation are set forth in [the Payphone Order] and are *not the subject of this proceeding*") (emphasis added).

³³ E.g., NYNEX CEI Order, ¶ 68 n.180; U S West CEI Order, ¶ 76 n.182.

steps in order to calculate the compensation due for each particular ANI invoiced by an IPP provider.

If no unique screening code is transmitted, by contrast, payphone calls can be under-counted. Even if calls are counted correctly, IXC's must check some reliable data base in order to confirm whether calls are from payphones and therefore, compensable under the Payphone Order. APCC's experience with the data base currently used to administer flat-rate compensation is that the data base information is frequently unreliable and imposes substantial delays and costs in collecting compensation. Frequently, compensation for a given period is never collected on certain payphones because of the difficulties of securing LEC verification. Transmitting a unique screening code for COCOT lines as well as coin lines would make it unnecessary for PSPs to have their collection of compensation continually delayed or denied due to the highly error-prone LEC verification data base currently in use.

The screening code refinements required by the Commission in CC Docket No. 91-35 do not materially change the discrimination or the resulting advantage on the BOC payphone operations over independent PSPs in the ability to collect compensation. With Line Information Data Base ("LIDB")-based Originating Line Screening ("OLS") LECs continue to provide independent PSPs using COCOT lines with a "07" code, which does not uniquely identify calls as payphone calls. To obtain identification, IXC's must arrange for access to LIDB information, which involves significant expense and/or delay. By contrast, LECs deploying LIDB-based OLS will continue to provide *their own* payphones,